



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

10004248-1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on

4/24/06

Signature

Typed or printed name

Desiree Reardon

Application Number

09/800,638

Filed

03/07/01

First Named Inventor

C. Brian ATKINS

Art Unit

2621

Examiner

Dennis Rosario

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒

attorney or agent of record. 35,398

Registration number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

John P. Wagner Jr.

Typed or printed name

408-938-9060

Telephone number

Date

4/24/06

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action dated January 24, 2006, Applicants respectfully request a review of the final rejection in the above-identified application. Applicants respectfully submit that the Examiner's rejections of the Claims are improper as an essential element needed for a proper prima facie rejection is missing (e.g., the teaching of all of the recited claim limitations). Claims 1-17 and 19 are rejected under 35 U.S.C. §102(e) as being anticipated by Balasubramanian et al. (hereinafter "Balasubramanian").

KEY CLAIM LIMITATIONS THAT ARE NOT MET BY THE CITED REFERENCES

Balasubramanian does not teach or suggest the image processing system set forth in Claim 1. Furthermore, Balasubramanian does not teach or suggest the method for processing a digital image set forth in Claims 8 and 15. More specifically, Balasubramanian does not teach or suggest the expressly recited limitations of a "generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window", as recited in Claim 1, and similar recitations of Claims 8 and 15.

Claim Limitations Having To Do With The Computing of an Edge Parameter and an Activity Metric Based on the Same Input Pixel Window are not met by the Cited References

Applicants respectfully assert that Balasubramanian and the claimed invention are very different. According to the Federal Circuit, "[a]nticipation requires the disclosure in a single prior art reference of each claim under consideration" (W.L. Gore & Assocs. v. Garlock Inc., 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983); see also MPEP 2131). However, it is not sufficient that the reference recite all the claimed elements. As stated by the Federal Circuit, the prior art reference must disclose each element of the claimed

invention “arranged as in the claim” (emphasis added; Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984); see also In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); see also MPEP 2131). In other words “[t]he identical invention must be shown in as complete detail as is contained in the ...claim” (emphasis added; Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); see also MPEP 2131).

Claim 1 sets forth an image processing system comprising: “a filter selection mechanism for receiving an input pixel window and responsive thereto for generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window,” (emphasis added). Claims 8 and 15 set forth similar limitations.

Applicants respectfully submit that Balasubramanian and the claimed embodiments are very different. Applicants understand Balasubramanian to teach a gamut mapping process for preserving local luminance differences. Balasubramanian teaches that different filters meant to filter different size areas can be applied to different size areas. In particular, Balasubramanian teaches that activity levels for different size areas are computed in selecting a filter.

Applicants respectfully assert that Balasubramanian does not teach, describe or suggest “generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window” as claimed (emphasis added). With reference to Figures 6 and 10, Applicants understand Balasubramanian to teach a filtering function that may be implemented at a metric function 400 that applies its output to filter selector 302 to select an appropriate filter for spatial filter 104 (col. 7, lines 60-63). A small area activity metric is

calculated for a small area (e.g., 5x5) and a large area activity metric is calculated for a large area (e.g., 15x15) (col. 7, lines 64 through col. 8, line 8). In particular, the small activity metric and the large activity metric are calculated based on different size areas. In other words, Applicants respectfully assert that the small activity metric and the large activity metric are calculated based on different input windows.

In contrast, embodiments of the claimed invention as recited in Claim 1 recite the limitation of “generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window” (emphasis added). In particular, the claimed embodiment provides for computing an edge parameter and an activity metric where both are “computed based on the input pixel window” as claimed (emphasis added). Accordingly, the claimed embodiment provides for computing an edge parameter and an activity metric use the same input window.

Applicants respectfully assert that Balasubramanian does not teach, describe or suggest “generating a filter identifier based on one of an edge parameter computed based on the input pixel window and an activity metric not indicating an edge parameter computed based on the input pixel window” as recited in independent Claims 1 and 8. In contrast, Balasubramanian teaches calculating different activity metrics based on different input windows. By explicitly teaching that the activity metrics are calculated based on different input windows of different sizes, Balasubramanian teaches away from the claimed configuration.

In the Final Office Action, the Examiner first argues that the “input window” as claimed is equivalent to the “footprint” of Balasubramanian (see Office Action mailed January 24, 2006, at page 3, paragraph a)) in support of the assertion that Balasubramanian

teaches “generating a filter identifier based on one of an edge parameter computed based on the input pixel window” as claimed. The Examiner then argues that the “footprint” of Balasubramanian is common to the “input window” as claimed (see Office Action mailed January 24, 2006, at page 3, paragraph b)), in support of the assertion that Balasubramanian teaches “an activity metric not indicating an edge parameter computed based on the input pixel window” as claimed. Applicants respectfully assert that these assertions are contradictory. As described above, Balasubramanian teaches that different footprint sizes are used for determining different metrics (col. 7, lines 64 through col. 8, line 8).

By relying on these different definitions of “footprint,” the Examiner has failed to establish a prima facie rejection. In particular, by relying on different definitions of “footprint” in supporting the rejection of the claims, the Examiner has failed to establish that Balasubramanian discloses the claimed invention “arranged as in the claim.” Accordingly, the aforementioned limitations are not taught or suggested by Balasubramanian, and thus an essential element needed for a prima facie rejection based on the cited reference is not present. Moreover, by relying on contradictory definitions of the term “footprint” in supporting the rejection of the claims, Applicants respectfully submit that Balasubramanian teaches away from the claimed configuration.

In view of the claim limitations not being shown or suggested in Balasubramanian, in combination with the above arguments, Applicants respectfully submit that independent Claims 1, 8 and 15 overcome the cited reference and are therefore allowable over Balasubramanian. Therefore, Applicants respectfully submit that Balasubramanian also does not teach or suggest the additional claimed features of the present invention as recited in Claims 2-7 that depend from independent Claim 1, Claims 9-14 that depend from independent Claim 8, and Claims 16, 17 and 19 that depend from independent Claim 15.

Applicants respectfully submit that Claims 2-7, 9-14, 16, 17 and 19 also overcome the rejection under 35 U.S.C. § 102(e) as these claims are dependent on allowable base claims.

In summary, Applicants respectfully submit because key limitations of independent Claims 1, 8 and 15 (from which Claims 2-7, 9-14, 16, 17 and 19 depend) are not met by Balasubramanian, Applicants respectfully submit that the rejection of Claims 1-17 and 19 under 35 U.S.C. §102(e) as being anticipated by Balasubramanian is improper and should be reversed.